IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9653 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRASINH HARISINH RAO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9653 of 2004

MR VK JOSHI for Petitioner No. 1

MR LR PUJARI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the

petitioner- detenu has challenged the legality and validity of the order of detention dated 02.04.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. The allegation against the present petitioner detenu is that he has involved himself in the offence punishable under the provisions of Suppression of Immoral Traffic in Women and Girls Act, 1956. It reveals from the grounds of detention served to the petitioner produced at Annex.B to the petition, it reveals that one offence has been registered with Gomtipur Police Station being II.CR No.3060/2004 under the provisions of the aforesaid Act on 01.03.2004. The detenu was arrested on the same day. It is also revealed that during investigation, it was also found that he has also committed one more offence punishable under the Bombay Prohibition Act. Allegation against the petitioner is that when he was apprehended and arrested, he attempted to mislead investigating agency and with that intention, he has not disclosed his true and correct identity. It is alleged that he has stated that he is "Kalpesh", but in reality, his name was Narendrasinh Harisinh Rao. Even competent authority has proposed for appropriate orders from the detaining authority and the petitioner was apprehended and detained as "Kalpesh". When it was noticed by the Investigating Officer that the petitioner has not disclosed the correct name and identity, Investigating Agency filed formal complaint for the wrong committed by the petitioner and the third offence has been registered with Gomtipur Police Station being II. CR No.3083/2004. The detaining authority has considered relevant papers of all the three cases, but mainly the petitioner has been branded as "dangerous person" as defined under the PASA Act.

3. The order of detention is assailed on number of grounds, but today, ld. counsel Ms. Banna Dutta appearing for ld. counsel Mr.VK Joshi has pressed into service mainly two grounds. The first ground placed into service is that one of the co-accused has been set at liberty by this Court today by allowing Spl.C.A. No.5820/2004 and so the order of detention passed against the petitioner can not be held to be legal merely because the petitioner was found involved in two other offences referred to above. According to Ms. Dutta, this is a

case of non-supply of all relevant documents and she has pointed out that though the detaining authority has specifically mentioned about the passing of the order of detention earlier in the name of Kalpesh, revocation of that order and decision taken by the authority to pass fresh order of detention against the petitioner in true and correct name, those documents are not supplied to the petitioner and, therefore, the right of the petitioner to make effective representation has been violated.

4. Ld. counsel Ms. Dutta has taken me through the relevant documents produced with the grounds of detention and it appears that those documents referred to by ld. counsel Ms. Dutta are not there in the bunch of set of papers supplied to the detenu. All these three documents can be said to be very relevant and important documents and non-supply of such documents would positively hamper the valuable right of the detenu to make effective representation as envisaged under Article 22(5) of the Constitution of India. So, on this ground alone, the order of detention requires to be quashed and set aside.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 02.04.2004 passed by the Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

[C. K.BUCH, J]

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